



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/747,817	12/22/2000	Rommel C. Lumauig	ACSC 60133 (2109)	4301

7590 07/26/2004

GUNTHER O. HANKE, ESQ.
FULWIDER PATTON LEE & UTECHT, LLP
HOWARD HUGHES CENTER
6060 CENTER DRIVE, TENTH FLOOR
LOS ANGELES, CA 90045

EXAMINER

PELLEGRINO, BRIAN E

ART UNIT PAPER NUMBER

3738

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/747,817	Applicant(s) LUMAUIG, ROMMEL C.	
	Examiner Brian E Pellegrino	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-23 is/are pending in the application.
- 4a) Of the above claim(s) 17-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-16 and 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

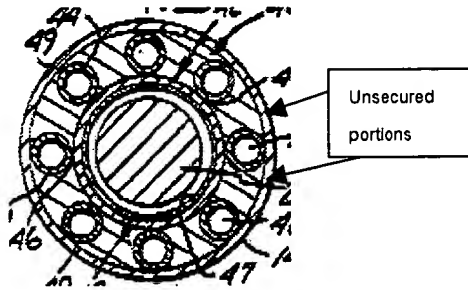
Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,10-12,15,23 are rejected under 35 U.S.C. 102(b) as being anticipated by Burns (5569201). Fig. 1B shows a catheter with an outer tubular member **14** and an inner tubular member **18** and an inflatable balloon **20** on the distal shaft. Fig. 4A shows the inner tubular member receives a guidewire **22** and is bonded to the inner surface of the outer tubular member via bonds **46**. The examiner is interpreting the claimed elements "unsecured portions" in this way: the area of the outer member that does not contact the tubes **44** is considered unsecured to the inner member because only the area where the tubes **44** are is there any bonding. Also since the area formed by the unsecured portions surround the tubes it can be construed that they define sections of the inflation lumen. The secured portions are separated from one another. Claims in a pending application should be given their broadest reasonable interpretation. *In re Pearson*, 181 USPQ 641 (CCPA 1974). See also *In re Morris*, Fed. Cir. 1997 127 F3d 1048, 1054,1055.



Burns additionally discloses the tubes or area defined by the unsecured portions are in fluid communication with each other, col. 6, lines 24-26. Burns discloses the tubes or bonding means are about 1mm, col. 6, lines 31,32 and see Fig. 4B. The balloon is fully capable of being configured for a deployable device. It can be seen (Fig. 4A) that there are opposing or equal distance bonded sections. It can also be construed that Fig. 1B shows two longitudinal spaced apart bonded or secured areas where the arrow points.



Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns '201. Burns is explained as before. However, Burns does not disclose the secured portions about 2-4mm in length or a radial dimension ranging from 0.5-3mm or spacing the secured portions from the balloon at about 3mm. It would have been an

Art Unit: 3738

obvious matter of design choice to modify the longitudinal dimension of the secured portions or radial dimension, since applicant has not disclosed that using a length about 3mm or radial dimension from 0.5-3mm provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the longitudinal dimension or radial dimensions as taught by Burns or the claimed longitudinal dimension or radial dimension in claim(s) 3,5,6 because both longitudinal and radial dimensions still function to attach or bond the tubular elements together and provide separate lumens. Regarding claims 7,8, it would have been an obvious matter of design choice to modify the spacing between the secured portion and balloon's proximal end, since applicant has not disclosed that using a range up to about 3mm provides any advantage, or solves a stated problem, or is used for any particular purpose. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the spacing taught by Burns or the claimed range up to 1mm or up to 3mm in claim(s) 7,8 because both spacings perform the same function of providing a separation of the inflation area and expansion area.

Claims 13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns '201 in view of Muni et al. (5533968). Burns is explained supra. However, Burns does not disclose the outer and inner tubular members are made from different materials. Muni et al. teach that outer and inner tubular members of a catheter are made of different material and bonded by heat, col. 11, lines 16-32. It would have been obvious to one of ordinary skill in the art to use different materials for the tubular

Art Unit: 3738

members of the catheter as taught by Muni in the balloon catheter of Burns such that a stronger bond may be achieved.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burns '201 in view of Brown (6096056). Burns is explained supra. However, Burns does not disclose the intermediate section of the balloon has a stent. Brown teaches (Fig. 3) a stent **18** on the intermediate portion **16** of the balloon **14**. It would have been obvious to one of ordinary skill in the art to use a stent in the intermediate region as taught by Brown in the balloon catheter of Burns in order to deliver a support structure to maintain the vessel lumen open.

Response to Arguments

Applicant's arguments filed 4/26/04 have been fully considered but they are not persuasive. It must be noted that the use of secured and unsecured "portions" is broad terminology and claims are to be given their broadest interpretation. As mentioned in the action the Examiner is interpreting secured portions of the outer member as areas where the tube 44 is bonded to the inner member and the unsecured portions as areas adjacent to the secured portions, but has no bonded tubes in the area between the inner and outer member. Applicant admits in page 9 of the amendment that the unsecured portions define the inflation lumen and thus means that the portions are adjacent one another and would imply they are radially spaced. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., secured portions

Art Unit: 3738

are not longitudinally spaced apart), please note that the Examiner is interpreting this limitation as what is understood in light of the specification, see Fig. 8 and page 6, lines 18,19.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Pellegrino whose telephone number is (703) 306-5899. The examiner can normally be reached on Monday-Thursday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

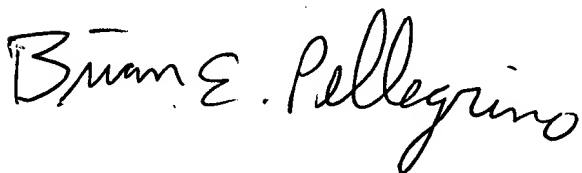
Art Unit: 3738

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached at (703) 308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

TC 3700, AU 3738

Brian E. Pellegrino

A handwritten signature in black ink that reads "Brian E. Pellegrino". The signature is written in a cursive style with a large, stylized "P" and "r".